IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 206 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UNITED INDIA INSURANCE CO LTD

Versus

PALSING MASASING JAT

Appearance:

MR PV NANAVATI for Petitioner

None present for Respondent No. 1

MR MA KHARADI for Respondent No. 2

MR RC KODEKAR for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/04/2001

ORAL JUDGEMENT

#. Heard the learned counsel for the parties.

#. At the outset, it is to be stated that this petition

by United India Insurance Company Limited to the extent it relates to impleading of the State of Gujarat as a party is wholly unjustified. It is a case where the State of Gujarat is neither necessary nor proper party. The matter in substance is in dispute between the petitioner on one hand and respondent No.2 on the other. It relates to temporary custody of the offending truck. Even the respondent No.1 was not necessary party to this petition. As the State of Gujarat is neither necessary nor proper party and in case the matter would have been examined from this aspect, certainly public exchequer have been unnecessarily burdened with the expenses of litigation. Moreover, in the petition, the petitioner is not praying for any relief against the respondent No.3. The petition against respondent No.3 is dismissed with costs which is quantified at Rs.1,000/= The United India Insurance Company Ltd. is directed to pay this cost to the State of Gujarat within a period of one month from the date of receipt of writ of this order. Rule discharged qua respondent No.3.

#. The facts of the case are that the petitioner Insurance company had insured the truck bearing registration No.MCC-2234 for a period commencing from 21.5.95 to 20.5.96 with the Policy bearing No.16041/31/21/849/95. The name of the insured owner of the truck is Smt.Hamidabi Kamaloddin Shaikh. The petitioner stated that the truck was robbed and stolen from the State Highway between Bhajipura and Vyara (Gujarat) on 24.8.95 at about 10 p.m. while the truck was carrying PVC resin from Hazira to Bambhori. The insured registered a complaint with Valod Police Station on 25.8.95. The police carried out Panchnama on the same day and also took FIR under section 154 for cognizable offence. The truck was registered with Jalagaon RTO bearing engine No.692 D02 903401 and chasis No.364 052 8 75380 at the time of registration and the same engine and chasis number were entered into the policy of insurance. It is averred that the original truck owner Smt.Hamidabi Kamaloddin Shaikh claimed under the policy and company paid Rs.2,47,000/= to the owner on 26.5.96 and obtained letter of subrogation and indemnity on 7.2.97 with respect to the said truck. The truck was seized as Muddamal by Valod police, Surat Rural under FIR aforesaid. The respondent No.2 - Jamal Ahmed Rafik Sheikh made an application under Section 451 Criminal Procedure Code in the court of Judicial Magistrate, First Class, Bardoli, Surat praying therein for temporary custody of the truck as he claimed himself to be the owner of the same. The registration of the truck was given by RTO at Bangalore as MH-01-H-490. The police

registered a complaint under section 395, 397, 398, 412, 466, 468 and 420 of IPC. The police felt that there is some foul play with the chasis number as well as registration number of the truck with RTO. The truck was sent to L.C.B. Surat Rural for investigation and F.S.L. at Surat gave report that the engine number is not tampered with, however, chasis number is tampered. The tampered chasis number is 364052509756. The F.S.L. was further able to verify the chasis number which was recorded in the policy as chasis number 364052875380 and the original truck registration number was MCC-2234. In these facts and circumstances, the petitioner - United India Insurance Company, through its authorized signatories filed an application ex.19 dated 12.3.2001 before the learned Judicial Magistrate, First Class at Bardoli to hand over custody of the truck to it as the Insurance Company has settled the claim and paid the insured money and obtained letter of subrogation and indemnity, they acquired right and title to obtain the custody. The respondent No.2 - Jamal Ahmed Rafik Sheikh also made an application ex.18 requesting for handing over the custody of the truck. Both the applications were decided together and the Judicial Magistrate has not given relief to the petitioner on the ground that it has already ordered for giving temporary custody of the vehicle to respondent No.2 which is final order and under Section 362 of the Criminal Procedure Code, it attains finality and the court has no jurisdiction to recall its own order. It has further been observed that since review application was made by the State against the order made in FIR No.44/95 on application made by Bhagvati Road Transport Company through one Gulabchand, and the said review application has been disposed of, order was passed to hand over custody of the truck involved in the robbery bore the tampered No.MH/01/H/490, cannot be reviewed.

#. I fail to see any justification in this approach of the learned Judicial Magistrate. It is a case where prima-facie it appears to be a case of tampering with the chasis number and it is confirmed by FSL report also. The Insurance Company has paid the claim of loss of the truck to the owner and it acquired exclusive right of ownership over the truck. If the tampering has been there and on the tampered number and consequently registration number the respondent No.2 is claiming the temporary custody and order has also been passed it is open to the Insurance Company to challenge the order by filing appeal or it can apply for review of the order. It is no more res-integra that where person is not a party to the proceedings and if in those proceedings,

order has been passed adversely affecting its right, it has right of appeal or review of the order. Otherwise also, the courts are meant to do justice with the parties and not to encourage those persons who forged and tampered with the record and get benefit thereof. If this approach is taken then what really people are complaining that persons who commit fraud and forgery are protected by the courts is correct. It is a case where this order made by the court adversely affects the right of the petitioner if what it is stated is correct. It is people's money and in this way it cannot be allowed to be squandered by unscrupulous litigants. The court has to consider that as far as possible in the matter of which it is seized of a person who commits fraud or forgery, he may not be benefitted out of the same.

#. In the result, this petition succeeds and the same is allowed and the order of the Judicial Magistrate, First Class, Bardoli, dated 17.3.2001 passed below ex.18 and 19 in Valod Police Station I C.R. No.44/95 is quashed and set aside. The Judicial Magistrate, First Class, Bardoli, is directed to decide the matter afresh on merits after giving opportunity of hearing to all affected persons including the petitioner and respondent No.2 and in accordance with law. It is also made clear that the learned trial court may not be influenced by any of the findings given by its earlier orders as well as any findings and observations made in this judgment by the court. Rule made absolute in aforesaid terms. No order as to costs so far as respondents No.1 and 2 are concerned. Direct service permitted to the petitioner.

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(sunil)